SUPREME COURT, U. S.

FILED

MAY 22 1974

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO. 73 - 1753

APPELLANT'S PETITION FOR WRIT OF CERTIORARI, TO APPEAL FROM THE DECREE OF THE JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY

313 A. 2nd 435, (Me., 1974)

(Attorneys for Appellees)
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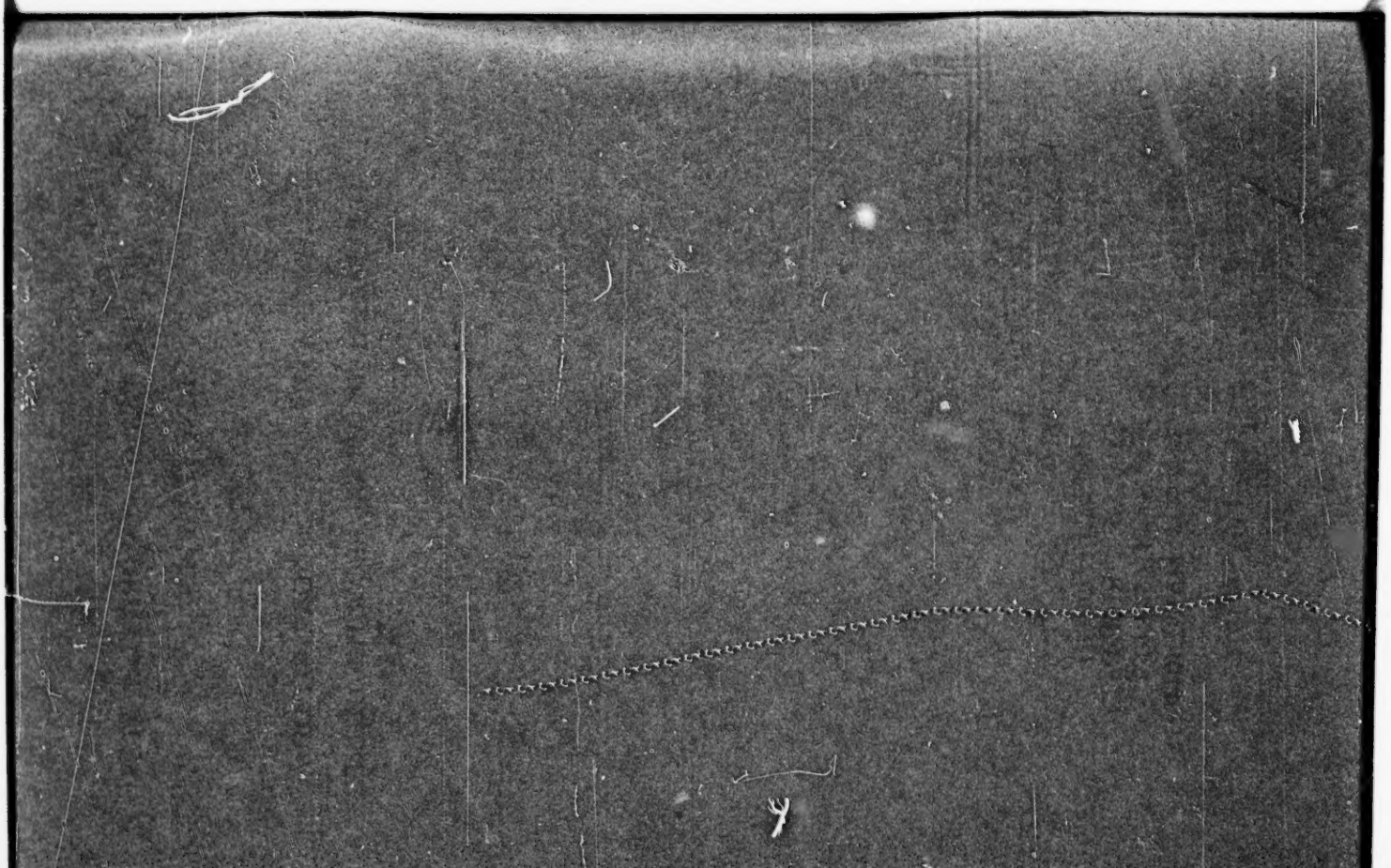
(Appellees)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE I. RICE DYER
% 61 STATE STREET
BANGOR, MAINE (04401)

May 4th, 1974



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MOTION

Motion is made: — for leave to request an Extraordinary Writ (under U.S.C. Rule 30-31) to be issued by this Honorable Court, authorized under 28 U.S.C. 1651 or 28 U.S.C. 2241.

The Appellant seeks issuance of a Writ of Mandamous, because: —

> THIS CASE: — AND ALL "LEGAL" PROCESS, LAW, AND PROCEEDURE TO DATE: — IS SO TOTALLY VOID, — — — IT IS AN UNCONSTITUTIONAL "LEGAL" NULLITY. . . .
>
> (Quid ab initio)

The nature of the complaint is so fundamental: — so totally without a "LEGAL" Remedy; — — — or answer, — — — or Justice; (in the state courts) — that "HABEAS CORPUS", (" in PRINCIPAL") exists.

Under U.S.C. Rule 31, sections (2) — (3) — (5): — — —

> THAT WHICH IS OBVIOUSLY WRONG;——— IN THE BEGINNING; CAN NOT IMPROVE WITH TIME.

It is my understanding that this Honorable Court may, at its own discretion; WAIVE ITS OWN RULES.

Whereas this Honorable Court has previously denied certionari, re: this same situation, (371 U.S. 949) — (1963) — — — it seems in order to Appeal, or request a rehearing, or to re-open the case on the basis of Equity and NEW EVIDENCE recently admitted;

In Re: Estate of Cassidy 313 A. 2nd at page 439, — (1974)

(quote) *"This Court in Murray examined, discussed and determined the LEGAL EFFECT of what John Cassidy said.*
It could give no HEED to what be MIGHT or 'SHOULD' have said."

TO THIS ADMISSION, — I RESPECTFULLY SAY: "HABEAS CORPUS." If a man is in "jail"; — and a law court admits; "It could give NO HEED to what he might or SHOULD have said:

— — AND IT DID NOT ANSWER THE (quote) "LEGAL EFFECT" — — (AT THE TIME OF HIS TRIAL) THE PRACTICAL APPLICATION OF LAW REQUIRES THE "HABEAS CORPUS", EFFECT.

** IT IS NEVER TOO LATE
FOR JUSTICE TO BE DONE. **

It has been extremely difficult for me, pro se, to write this Appeal. Lawyers have only delayed me and declined to

become involved for fear of "admonishment".

Please see:—

Admonishment; without prejudice.

(313 A. 2nd at p. 439)

It has been IMPOSSIBLE to mechanically get this case timely printed, and organized in order to comply with this Honorable Court's rules.

Therefore I beg leave, (of a few days) to timely file.

In view of unusual hardship, may I proceed; — as a matter of law and principle. . . . . and equity.

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO.

EDYTHE RICE DYER, APPELLANT (PRO SE)

RE: ESTATE OF JOHN CASSIDY

313 A. 2nd 435

APPEAL

TO

THE SUPREME COURT

of the UNITED STATES

TO:

THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Appellant respectfully requests leave to file, and that a writ of certiorari issue to review on appeal, the final decision of the Supreme Judicial Court of the State of Maine, as filed on Feb. 21, 1974.

OPINIONS BELOW

The Probate Court Decree, in regard to Edythe L. R. Dyer's Petition of October 16, 1969, County of Penobscot, State of Maine, appears in the certified Record of the case, at page #17. . . . (R. 17).

The Order of Superior Court, County of Penobscot, State of Maine, Docket #9423, was filed on October 6, 1972, re: the Appellant's Appeal, it appears in the certified Record of this case at page #322. . . . (R. 322).

The Opinion of the Supreme Judicial Court of Maine. (the Law Court) dated December 26, 1973, is reported as:

Re: Estate of John Cassidy
313 A. 2nd 435, (Me.) (1973)

A Motion for Review, of Errors of Law, and Supplementary Relief, — filed with the Supreme Judicial Court on January 15, 1974 — — was denied, and opinion filed

Febuary 21, 1974.

JURISDICTION

WHEREAS: — — — THE PETITIONER HEREIN IS SERIOUSLY AGRIEVED; THE "LEGAL" ISSUES HEREIN REQUIRE CONSTITUTIONAL SUPERVISION; — AND JUSTICE NEEDS TO BE DONE.

THIS APPEAL IS MADE, NOT TO PROLONG THE CASE, OR TO BE VINDICTIVE TOWARD ANYONE.

Jurisdiction is invoked under the United States Supreme Court Rule #19: 30-31

(A) "A state court has not decided a federal question", — in accord with applicable decisions of this court.

(B) "A court of appeals has "decided an important State statutory question in a way in conflict with APPLICABLE STATE LAW".

" — and has so far departed from the accepted and usual course of judicial proceedings —" . . .

THAT: — — —

As a citizen of the State of Maine, I have been constantly and continuously denied my LEGAL (and Civil Right) as a claimant of INTESTATE property; as provided under (quote) "the SAME MANNER" (quote) "provided by the laws of the State of Maine for the descent among LINEAL descendants of intestate property.

Murray vs. Sullivan
158 Me. at page 99
(my emphasis)

THIS LEGAL RIGHT CONTINUES: — —
As admitted in Murray (supra), at page #100; — — THE COURT SAID:

(quote) *"The applicable statute, incorporated by reference into the (Cassidy) will IS — R.S. 1954, Chap. 170, Sec. 1, Sub sec. II, which provides:*

(quote) *"The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation.*

If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not according to the right of representation."

(my emphasis)

*** THE MAINE LAW COURT HAS CREATED A "NEW" DEATH DATE; — FOR MR. CASSIDY, (43 years after he actually died) * *

*** The Law Court will not (quote) "PERMIT" — the statute to be applied; as required by the applicable statute: (158 Me. at p. 107)

THE WORDS, — OF THE STATUTE: —

(quote) — " — — *and to the issue of a ("pre") deceased child by RIGHT OF REPRESENTATION". — HAVE BEEN OMITTED.*

Note: I am the only child, of Mr. Cassidy's only child, who pre-deceased him with issue. Four of his (5) children directly survived him. — (no widow).

Under U.S.C. Rule #15, (E)

The appeal is from a state court and the grounds upon which this Motion is presented, contends that federal questions are substantial (Zucht vs. King, 260 U.S. 174-177). The nature of this case and the rulings of the state court are capricious, arbitrary, prejudicial, illegal, contrary to facts, and "LEGALLY" IMPOSSIBLE, under State and Federal Constitutions.

These contentions bring the case within the jurisdictional provisions (and civil rights of citizens) under Amendment XIV of the U.S. Constitution.

Under U.S.C. Rule #33, (B), I do say: — — —

(quote) *"Any proceeding in whatever court — — the constitutionality of any Act of Congress affecting the public interest is drawn in question — all initial pleadings, motions on papers in this court shall recite that 28 U.S.C. Sec. 2430, may be applicable, and shall be served upon the Solicitor General, Department of Justice, Washington, D.C. (20530)*

The issues herein have not been previously answered.

A VALID, FINAL PROBATE DECREE DOES NOT NOW EXIST . . .!

The exercise of this Honorable Court's power of SUPERVISION, is respectfully requested.

IT SHOULD NOT BE MY DUTY TO HAVE TO PROVE MY RIGHTS UNDER THE EXISTING VALID (UNAMBIGUOUS) "LEGISLATIVE" LAWS OF THE STATE OF MAINE.

AND, it is my right under State and Federal LAW to HAVE PERFORMED that which the LAW DOES PROVIDE. (State vs Hamlin 86 Me. at p. 505)
(State vs Mitchell 97 Me. at p. 70)

In (State vs Hamlin 86 Me. at p. 505-506)

(quote) "*The Constitution guarantees to the citizen the right of acquiring, possessing and protecting property, Article I, Sec. I, which includes also the right of disposal. BUT THE GUARANTEE CEASES TO OPERATE AT THE DEATH OF THE POSSESSOR. THERE IS NO PROVISION OF OUR CONSTITUTION, OR THAT OF THE UNITED STATES, WHICH SECURES THE RIGHT TO ANYONE TO CONTROL OR DISPOSE OF HIS PROPERTY AFTER HIS DEATH, NOR THE RIGHT TO ANYONE, WHETHER KINDRED OR NOT, TO TAKE IT BY INHERITANCE. Descent is a creature of Statute, and not a natural right*".

(Emphasis Mine) (2 Blackstone's Com. page 10-13) Strode vs. Commonwealth 54 p. St. 181)

(quote) "*IT ENABLES THE FEDERAL COURTS TO ENFORCE THE RIGHT, EVEN WHEN THE STATE COURTS SHALL REFUSE TO DO IT*".

(My emphasis) — State vs. Mitchell 97 Me. at p. 70-71)

AND, as stated in 3 AM. Jur. p. 336; (287 U.S. 1)

(quote) *"The United States Supreme Court will pass upon the constitutionality of STATE statutes, where constitutional RIGHTS are involved — when it appears that the party IS within the CLASS raising the QUESTION".* (Dyer Brief to Law Court p. 77)

(quote) *"The terms of the constitution are to be read into the statute.*

(State vs. Mitchell
97 Me. at page 76)

BECAUSE: The Honorable Supreme Judicial Court of Maine has not considered or ANSWERED, the Constitutional question; or applied the intestate statute, and IGNORED THE STATUTORY PROBATE LAWS of the State of Maine; I respectfully state that UNFINISHED LEGAL PROCESS — remains to be legally completed, especially in the Probate Court's jurisdiction.

FOR EXAMPLE: under Title 18, Chap. 205, Para. 1551, M.R.S.A.

(quote) *"Upon the death of ANY person intestate, the Judge having JURISDICTION shall grant administration of such intestate goods, — on estate to WIDOW, husband, NEXT OF KIN," (etc.)*

THE PROBATE COURT "IS A STATUTORY COURT". (Roukos Estate 141 Me. at P. 83). — Therefore, all probate proceedure is ALSO regulated by the LAWS OF MAINE . . . (This process cannot be ELUDED).

In Hammond vs. Street: (106 Me. at page 213)

(quote) *"It is a general principle of construction that where a right is given by STATUTE and a REMEDY provided in the same act, the right can be pursued in no other mode".*

"The language of the statute under consideration is plain and unambiguous. Some beneficiary named therein MUST exist at the TIME OF THE DEATH of the deceased, otherwise NO right of action exists".

"No right of action is to be INFERRED and no remedy is to be given except as specified in the statute".

To para-phrase: —

(quote) *"The construction contended by the (Maine LAW COURT) VIOLENTLY distorts the plain language of the STATUTE, while that adopted (by your Appellant) follows its NATURAL AND REASONABLE meaning. It is therefore the opinion of the court that this action cannot be maintained".*

(quote) *"In other words, the (MAINE LAW COURT) has taken the position that the administrator is given a right of action in any event and the beneficiaries should be determined, NOT as of the date of the DEATH, but of the recovery. Such a construction CANNOT be adopted as in STRAINS the language of the STATUTE beyond its TENSIL strength".*

(Hammond vs. Street)
(My emphasis) (Supra)

In the herein case, (Estate of John Cassidy 313 A. 2nd 435) the same problem exists. A valid statutory civil right continues to exist, in the appellant, who is the ONLY DIRECT LINEAL "MEDIATE" CLASS survivor (in esse), of the said John Cassidy. EITHER THE INTESTATE STATUTE IS APPLICABLE, — OR IT IS NOT . . .!

IF NOT; — THE ESTATE *IS* "INTESTATE" ANY WAY: — AND MUST BE SO PROBATED.

In State vs. Mitchell, (97 Me. at page 70)

(quote) *"The scope of the clause cited from the XIVth Amendment, that NO STATE shall deny any person within its jurisdiction the equal protection of the laws, has often been considered by the Federal and State Courts and more or less conflict of opinion well established. Though the words of the clause*

are prohibitory, they can contain a NECESSARY IMPLICATION OF A POSITIVE RIGHT, the right of every person — to an EQUALITY before every law, the right to be FREE from any discriminations as to legal "rights" or duties a STATE may seek to make between him and other persons".
[My emphasis]

Strauder vs. West Virginia, 100 U.S. 303.

(quote) *"A FEDERAL SANCTION TO THE 'EQUALITY OF RIGHTS' IS EMBEDDED IN THE MAINE BILL OF RIGHTS".*
(quoted from Dyer Brief to Law Court at p. 90-91)

I, Edythe L. (Rice) Dyer, the appellant herein, was (once) CLASSIFIED by the Probate Court, and by the Maine Law Court in Cassidy vs. Murray (144 Me. 326). — I was the only "PER STIRPES" CLASS claimant. (My mother pre-deceased Mr. Cassidy, I alone survived her. Four (4) direct immediate class children also survived Mr. Cassidy.

I object to being reclassified by a (LAW) court which is without JURISDICTION, to re-classify a DIRECT "MEDIATE" CLASS SURVIVOR, UNDER THE PROBATE AND INTESTATE STATUTORY LAWS OF MAINE.

YOUR PETITIONER CLAIMS THAT BOTH FACTS AND LAW CONTINUE IN DISPUTE, BECAUSE THE "LEGAL" QUESTION PRESENTED, and its application, according to the ADMITTED FACTS (AS FOUND BY PROBATE COURT), SHOULD HAVE BEEN ACTED UPON IN A "LEGAL" MANNER, as admitted in this case, (Estate of John Cassidy) 313 A. 2nd at page 438 — 439, — — (9).

(quote) *"Equity will not assume jurisdiction of a bill for construction of a will where any doubt as to the meaning of the language of the will should have been removed by previous decision".*

ALTHOUGH NO TIMELY EQUITY APPEAL EVER EXISTED: THE MAINE LAW COURT SET-ASIDE ALL ORIGINAL PROBATE FACTS, SUBJECT MATTER, PROCESS AND PROCEEDURE, RE; (2) PREVIOUS PROBATE DECREES. (Dyer Brief to Law Court at page 94-95 and 107)

It is to be noted:

> That the "Supreme" Law Court and the "Supreme" Probate Court ARE BOTH appellate courts of their own final jurisdictions. It was unconstitutional for the law Court to REVIEW that which two (2) probate courts had certified (as true) to the Law Court; — FOR LAW.

It was unconstitutional for the Law Court to PERMIT the applicable intestate statute, to be INCORPORATED by reference, into the Cassidy Will; NOT BEFORE (43) years after he DIED.

It was unconstitutional for the Law Court to ORDER the Supreme Court of Probate — to OMIT the direct "mediate" class survivor, as a CLASS. ("Classes" do not LAPSE). — — — (Hunt vs. Hunt 37 Me. at p. 343)

Under, 4 M.R.S.A. Sec 401, (probate appeals): — BEFORE ANY APPEAL IS POSSIBLE the following statutory law is required — —,

> (quote) *"All cases appealed directly from the probate court shall be CERTIFIED to the register of probate, of the county from which said APPEAL ORIGINATED".*
>
> (4 M.R.S.A. Sec. 401)
>
> (Thompson Appellant 116, Me. 473)

As stated in Cutting vs. Tilton, 118 Me. at page 94, did the Maine Law Court; exceed its "allowable practice" as a law court?

However in the Cassidy Tax case the Law Court admits:

(quote) *"We conclude that the inheritance tax due the State of Maine of the remainder created by the trust under the will of John Cassidy must be assessed on the basis of the rates in effect applies to the balance determined AS OF THE DATE OF THE TESTATOR'S DEATH, March 25, 1918".*

Johnson vs. Stetson
(159 Me. at page 44)

YES, YES! — — —

The case of Johnson vs. Stetson, (Supra) admits that the "LEGAL" estate (quote) "PASSED" on March 25, 1918: — — — (not on June 9, 1961)

In the sense of the intestate and probate statutes, the LEGAL claimants, are unnamed creatures of statutory law, — in classes, which the statute alone created. NOTHING MORE!

In my Brief to the Law Court (Sept. 1973) (at pages 3-9) I questioned the LEGAL EFFECT of the QUESTION OF LAW: — which the Law Court was duty bound to define for the PROBATE COURT.

At page #11 to 19, LEGAL CONSIDERATIONS plainly probed the fact that Mr. Cassidy's "LEGAL" ESTATE, (Quote) "PASSED" on March 25, 1918, as admitted in Johnson vs. Stetson (159 Me. at p. 38) and was correctly PROBATED — (WITHOUT APPEAL).

LEGAL DEPRIVATION of property occurs when full use, or POWER to dispose of it is gone. McKay vs. McInnes
49 S. Ct. 34, (279 U.S. 820)

ANOMALY EXISTS: because of the presumption that Mr. Cassidy (quote) "MUST" legally die (43) years after he actually died: — this is prejudicial to the DIRECTLY EXISTING (per stirpes) MEDIATE CLASS; — and permits "special privilege" for more remote claimants. Although all DIRECT "IMMEDIATE" CLASS survivors are now deceased; — (*and*, survived by their remote survivors) the only DIRECT "MEDIATE" CLASS survivor claims to be —

(quote) *"RESTRICTED ONLY BY THE LIMITATIONS FIXED BY THE INCORPORATED STATUTE.* (158 Me. at p. 103)
Murray vs. Sullivan

The Law Court's "CIRCULAR" reasoning is hypothetical (not law). It has reasoned backwards, and presumed, "the FIAT end, justifies the means".

Namely that:
A "NEW" DEATH DATE — presumably (quote) "SHOULD", INVOKE THE APPLICABLE INTESTATE STATUTE. — BUT, WHAT ABOUT OTHER APPLICABLE LAWS OF THE STATE OF MAINE; — SUCH AS PROBATE LAWS; AND "CONSTITUTIONAL" LAWS —?

The Court said Mr. Cassidy "SHOULD" intend for the statute to operate "AS THOUGH" no child (or child's ISSUE) directly survived him: — on March 25, 1918, — (158 Me. at p. 102). — BECAUSE the intestate statute was NOT incorporated by reference into his will; — until AFTER; — all (4) (children) who DID "DIRECTLY" SURVIVE HIM; — were all dead.

Then, the Court went on to say, (IPSE DIXIT) — that:

(quote) *"to effectuate the testator's intention — the statute MUST be applied — after the death of his last surviving child —".* (158 Me. 107)

"Because the distribution was for ALL [?] of his LINEAL descendants — and (quote)," — restricted ONLY by the limitations fixed by the incorporated statute".
(158 Me. at p. 103)

AND

(quote) *"The Legislature seems to have made the SAME ASSUMPTION, — in the SECOND SENTENCE of the quoted (applicable) statute". — (But what about the first sentence —?)* (158 Me. at p. 108-109).

THE PRACTICAL SCIENCE OF LAW: — HAS CAUSE TO BLUSH, BECAUSE THIS VOID, — HYPOTHETICAL, CIRCULAR CONCLUSION, — MUST RETURN TO WHERE EVERYTHING STARTED: (in the original jurisdiction of a probate court) — if original probate "res judicata" is applicable.***

***FOR A "FOUNDATION" UPON WHICH TO PRESENT —

(quote) *"A question of law", — under an AGREED statement of facts: — TO A LAW COURT.*

NOTE:

When Mr. Cassidy died: — the disposition of his property (after that date) precluded NEW STATUTORY FUTURE INTENTION.

SURELY, if the (quote) "SAME MANNER", which the Maine Intestate statute required (quote) "AT THE TIME OF HIS DEATH" — (did NOT *continue* to control the *disposition* of his estate thereafter); — THE STATUTE (quote) "SHOULD" — NOT; (AND OBVIOUSLY DOES NOT) — "LEGALLY" LEND ITSELF TO CREATE; — (quote) "A NEW CLASS" — (AGAIN) — (for the first time); — (43) years AFTER Mr. Cassidy actually "legally" DIED.

THIS IS NOT ALLOWABLE (law court) PRACTICE (Cutting vs. Tilton) (Supra)

Judicial FIAT could construe any hypothetical — (original) situation, — IF IT CANNOT BE APPEALED, — this is not DUE PROCESS.

IF a citizen is LEGALLY guilty for hunting on Sunday; — (regardless of the fact that a Court presumes he

INTENDED to be hunting on Monday) — HE MUST BE PRESUMED, TO HAVE KNOWN WHAT HE INTENDED; — AND TO KNOW THE APPLICABLE LAW. Anything else is mallum prohibitum.

(Please see My Review Brief, Jan. 15, 1974. at page 9-10)

The Maine Law Court has AGAIN relied upon judicial FIAT, to "nail down" the VOID case of Murray vs. Sullivan: —

FOR EXAMPLE: —
IN the case of (Estate of John Cassidy, at page 435) (2) it NOW admits that:

THE, — *"decree of Superior Court acting within its competent jurisdiction (as an inferior court) in construing — the interest of trust beneficiaries WAS binding on ALL parties, ABSENT a successful attack directly on appeal: — AND SUCH NOT HAVING OCCURED. The issue could not be relitigate".*

(My Emphasis)

Please Note: —
OF COURSE; — *"A successful attack directly on appeal has not occurred",*

BECAUSE

Every appeal which I have attempted since the Murray vs. Sullivan case, (1962) — (all the way to the U.S. Supreme Court) — has been DENIED, constitutional "DUE PROCESS".

* * * *

IMPORTANT: —

On Dec. 26, 1973, the Supreme Judicial Court of Maine: AGAIN — SPOKE, (re: The Murray vs. Sullivan case) and admitted for the first time, that it DID: (INTENTIONALLY or otherwise):

(quote) *"DETERMINED THE LEGAL EFFECT, of what John Cassidy (actually) said".*

(My Emphasis)
(313 A. 2nd at p. 439)

This constitutes and admission, and new evidence which has not previously been available.

With one word, "LEGAL" the Court swept away its previous conjecture, presumptions, *and* the Murray case.

Undeniable and impeachable proof exists; — that it was the Court's LEGAL DUTY to apply both sentences of the applicable intestate statute in a "LEGAL MANNER", without construction.

THE COURT SAID MORE, IT ADMITTED;

(quote) *"It could give NO HEED to what he (Mr. Cassidy) MIGHT or "SHOULD" have said.*

(313 A. 2nd at p. 439)
(My Emphasis)

IT IS NOW (in effect) ADMITTED, that the (quote) "question of law," — (R. 402) — (quote) — ("as the rights of the parties require") — (R. 401) — As Reported, under an Agreed Statement of Facts; — HAS NEVER BEEN "LEGALLY" ANSWERED.

The word LEGAL, takes the "case" — out of Murray vs. Sullivan, and away from the nebulous world of presumption, construction, FIAT, and places it "plunk" in the catagory of any other LEGAL INTESTACY.

Please Note:

I have finally received the answer; which I have requested, and requested, and requested, — and been denied, and denied.

IT IS ADMITTED, —

(quote) *"This court in Murray, examined, discussed and determined the LEGAL effect of what John Cassidy said."*

(313 A. 2nd at p. 439)

****HOW BEAUTIFUL! — BUT IT IS NOT TRUE — !

THIS STATEMENT RESCINDS, AND PROVES:

THAT,

The final (Probate) distribution decree referred to in the case of Estate of Cassidy, (Supra) is NOT VALID.

THAT:

The presumed hypothetical construction in Murray vs. Sullivan SHOULD HAVE HAD, (quote) "THE LEGAL EFFECT".

THEREFORE: —

It would NOT be incongruous (quote) "to permit", — the "LEGAL" effect of the intestate statute to OPERATE. (including the First Sentence.)

(Murray at p. 107)

THAT:

The "limitations of the statute" REQUIRE THE "LEGAL" effect of Mr. Cassidy's death, at the TRUE time of his death (which is the only time the LEGAL effect (as a result of the epoch of his death) is LEGALLY possible, under the "applicable" statute. (Murray at p. 107)

AND THAT: —

The Court now "thinks" it most normal and natural that the testator — "SHOULD" view his "LEGAL" LINEAL descendants, NOT AS A "NEW CLASS", — but in the "SAME MANNER" (quote) "provided by (the continuing legal effect of) the" LAWS of the State of Maine for the DESCENT — among lineal descendants of (his) INTESTATE PROPERTY".

— ("should") — (Murray at p. 102)
("as provided") — (Murray at p. 99)

OBVIOUSLY:—

"IT could give no heed, to what he "might" or "should" have said".

BUT THAT IS EXACTLY WHAT THE COURT HAS DONE WITH "FIAT", — AND REFUSED TO REMEDY.

FRANKLY; — HAS THE PROBATE COURT (a court of competent jurisdiction) ISSUED A VALID DISTRIBUTION DECREE —? (of its own) in a LEGAL manner, as required by statutory probate proceedure —? — Not Yet!

***MY MOTION, INTENDS TO SAY:

THAT ONLY this Honorable Court, can SUPERVISE this strange and strained conflict of LAW between two different branches of Maine government; — and two "SUPREME" judicial jurisdictions.

THEREFORE: —

** (QUESTIONS PRESENTED)**

(a) Will this Honorable Supreme Court of the United States please take jurisdiction of this case, so that justice may be done . . . ?

(b) Have my Civil Rights, been denied:— The SAME, "due process" the same "equal rights", (which any mediate class citizen might have claimed) under the protection of the laws of the State of Maine and the United States government . . . ?

(c) Will this Honorable Supreme Court please exercise its power of SUPERVISION, under U.S.C. Rule # 19, 30, 31?

****

(d) Was it "LEGAL" for the Maine Law Court to refuse (quote) To "PERMIT" the Maine intestate statute to CONTINUOUSLY OPERATE, AS REQUIRED BY, — (quote) "THE LAWS OF THE STATE OF MAINE?
(Murray at page 99)

(e) Was it incongruous for a "Supreme" law court to force a "Supreme" Probate Court to create (de novo) "NEW" — (Statutory) "LINEAL" HEIRS, (43) years AFTER Mr. Cassidy DIED? (158 Me. at page 107)

(f) Can the irrefutable, irreducible and inexorable legislative "public policy" of the State of Maine, have a (quote) "— future legislative method", (158 Me. at page 108):— for creating a (quote) "NEW CLASS", for the PROBATE COURT which Mr. Cassidy (quote) "SHOULD", have intended?

(g) If so, could this statutory provision have provided the "SAME MANNER" of distribution, without a FALSE DEATH DATE —? DID AN EXISTING LEGAL REMEDY EXIST? (pro forma . . .?)

(h) Could a DIRECT "MEDIATE" (per stirpes) Survivor (the issue of a child who pre-deceased Mr. Cassidy) — waive LEGAL CLASS RIGHTS; — or surrender the original Probate Court's (unappealed) JURISDICTION?

****

(i) Is it true that:

(quote) *"Nothing in a statute shall be construed as surplusage, if a reasonable construction supplying meaning and force is possible" —?*

U.S. vs. Kreider
313 U.S. 443
(quoted in)
National Newark vs. Hart
309 A. 2nd 512, (Me.) 1973.

****

(j) Is it true that: law courts may not REVIEW AGREED FACTS . . .?

(quote) *"The Legislature in constituting the Law Court, (and its jurisdiction) — did not intend it to be used as a substitute for presiding judges, (to RELIEVE THEM) in trial courts, from the duty of deciding — MERE INTERLOCUTORY QUESTIONS".*

(My Emphasis)

****

STATEMENT OF THE CASE

FIRST:

The Name of this case is:

RE: ESTATE OF JOHN CASSIDY,
313 A. 2nd 435 (Me.) (1974)

It is important to stress the fact that this case concerns an appeal, which originated in the Probate Court of ORIGINAL JURISDICTION, (1918) and (1969).

And which finally terminated in the Supreme Judicial Court of Maine, as filed on February 21, 1974.

It does not seek to review the case of Murray vs. Sullivan 158 Me. 98.

All appeals and motions have now been denied; apparently, no LEGAL remedy, now judicially exists, under Maine law; and the Courts have refused to answer the UNCONSTITUTIONALITY of the questions presented.

SECONDLY:

As stated in the case, Estate of Cassidy, 313 A. 2nd at page #437, my case does not; (as Court suggested at page #437) — "bottom itself", — as seeking a REDETERMINATION, OR NEW DECLARATORY JUDGMENT of the case of Murray vs. Sullivan, 158 Me. 98, (179 A. 2nd 307) (1962).

THIS EXCUSE, FOR NOT ANSWERING THE CONSTITUTIONAL QUESTIONS PRESENTED: — — IS NOT BASED UPON FACT; THE PROBATE ISSUES; OR STATUTORY REQUIREMENTS.

The presumption that a new declaratory judgment was desired: —

IS A DEAD END STREET

WHICH I REFUSE TO BE

FORCED TO ENTER.

This evasion is more of the same "ipse dixit fiat", — that "father knows best:" — BUT IT IS NOT LAW. The appellant declines to "get lost" down a dead end street, or "go away" and please forget about required probate law; — constitutional rights: due process; and the EQUAL PROTECTION to have performed that which the mandate of the Maine INTESTATE STATUTE CONTINUES TO PERMIT ME TO CLAIM, — "in infinitum".

(Hunt vs. Hunt, 37 Me. at p. 343)
Dodge vs. Dodge 113 Me. p. 158

As plainly stated in my Appeal Brief to the Law Court, (September Term 1973) at page #2,

(quote) *"Mrs. Dyer DOES NOT SEEK; "A NEW DETERMINATION MADE BY THIS COURT," as Judge Woodcock's Probate Order of Dec. 22, 1969, IMPLIES".*

(quote) *"This statement is one of the reasons for my appeal. NOTHING NEW is requested, BUT EVERYTHING PRIOR to June 9, 1961; — — being Res Judicata" — — (in the Probate Court).*

And at page #13, of my Motion for Review, dated Jan. 15, 1974, I said: — — —

(quote) *"Will the Court please try to understand that one of the reasons for my appeal to the Law Court, was because of this limited (and legally hopeless) false premise, which cunningly attempts to restrain me into an indefensible situation".*

"DUE PROCESS", HAS BEEN DENIED:— —

via, — — "a dead end" judicial street.

NOTE:

It is often the policy of appellate courts to avoid answering "Constitutional" questions:— — IF they can be disposed of in any other manner.

PLEASE NOTE:

This case (Estate of Cassidy) is now pending in the PROBATE Court, of original jurisdiction. The Record will show (R. 4) to (R. 16) that CONSTITUTIONAL questions were raised, re: due process, procedure, and equal rights under statutory law, together with jurisdictional questions. A VALID final probate decree, was requested (R. 4) — (R. 12).

Instead of answering these questions and requests; (R. 15)

— (R. 16) the Probate Court looked for reasons why it would not answer fundamental constitutional questions which have been constantly reserved. — — Such as the new Declaratory Judgment allegation. (Supra).

At (R. 19)

The Court ignored the fact that; — —

(1) Constitutional issues should be answered.

(2) If such issues have been overlooked, everything to date (re: Murray vs. Sullivan) is VOID. — — I have repeatedly alleged that the case of Murray vs. Sullivan 158 Me. 98, — — IS A NULLITY: — — requiring justice to be done.

The Court frankly admitted at (R. 21) that:

(quote) *"Perhaps the real basis for Mrs. Dyer's complaint is stated in the petition dated Oct. 16, 1969, where she says, — — "JUSTICE has not been done in Murray vs. Sullivan". (R. 21).*

However, the Court chose "a way out" by *NOT* ANWSERING HOW JUSTICE HAS BEEN "LEGALLY" DONE, ACCORDING TO FACT, AND LAW, — IN A CONSTITUTIONAL MANNER.

The Court said:— —

(quote) *"The petition seeks to have a NEW DETERMINATION made by this Court — ". (R. 19).*

On Oct. 6, 1972, the Supreme Court of Probate at (R. 322) went along with the lower probate court.

(quote) *"Because the Appellant appears Pro Se and without assistance of counsel, the Court has CHOSEN TO TREAT the motion, as a motion for judgment on the pleadings RATHER THAN rely on the more narrow grounds of sufficiency of the Appeal and Reasons for Appeal." (R. 322)*

(My Emphasis)
(opponent Attorney's Brief page 2)

Legal grounds do exist; — — and no matter how narrow they may appear to the Court, — — fundamental "CIVIL RIGHTS", require answers.

However, the Supreme Court of Probate jumped at the opportunity to agree with the lower court's presumption, that a NEW DECLARATORY JUDGMENT, of the Murray vs. Sullivan case (supra) was being sought.

The "Murray" case (by necessity) had to be referred to, because it concerned the (PROBATE) distribution of the estate of John Cassidy. It has been constantly and continuously protested, as the Probate Record of distributions to date, will show. (All distributions made to date, have been "under protest".)

The Murray case will also be referred to herein, so that background and history, may be easily understood. Also to show how, when and why, the case of (Estate of Cassidy) (supra) stands upon its OWN ORIGINAL "res judicata" merits, as a prior process.

THE PROBATE FACTS AND CERTIFIED SUBJECT MATTER, (re: the Cassidy Estate) WAS PROBATED, ON APRIL 13, 1918. — — (R. 245)

THIS FACT HAS NEVER BEEN TIMELY APPEALED.

It was subtle and void for the Maine Law Court to continue to overlook all PRIOR — — "res judicata" PROCESS AND PROCEDURE IN THE PROBATE COURT.

It was arbitrary to technically allege that a NEW DECLARATORY JUDGMENT WAS desired by the appellant, rather than a PROBATE DECREE (WHICH IS "VALID") AS REQUESTED.

(R. 90-95)

Please see my Review Brief, (Jan. 15, 1974) at page 8, and 12 to 14:

Instead:

The Law Court also took the easy way out, by resorting to RES JUDICATA, — — — "a la" Murray vs. Sullivan, 158 Me. at page 107.

May I respectfully represent that the Court's "res judicata", is applicable ONLY TO VALID ISSUES DECIDED, ON THE BASIS OF TRUE FACTS, — — (presumably certified to the Law Court, by the Supreme Court of Probate.

***(Not, facts found by law court, and certified to probate court . . .! — — (inversely . . .!)

Proof exists: —

In Murray vs. Sullivan at page 100; — — (the Court admits) — — The claimants disagree ONLY as to the PROPORTIONS, which the (quote) "applicable", INTESTATE statute provided.

The "Supreme" Court of Probate was (only) confronted with an INTERLOCUTORY question of law, — as a result of the survivor trustee's request for legal instructions.

My Review Brief (1/15/74) at page 5, to the Law Court, plainly points out, that construed HYPOTHETICAL presumptions are NOT APPLICABLE TO THE DOCTRINE OF "RES JUDICATA", AS FACTS DECIDED.

(31 U.S. 337)
(57 S. Ct. 816)
(Appellants Brief, Sept. 1973
— — at p. 77)

However, the Court chose to rely upon IPSE DIXIT PRESUMPTION and FIAT, by quoting the opponent attor-

ney's contention. (in Estate of Cassidy) — (313 A. 2nd at p. 439)

> (quote) " — — *her persistent course of conduct, which seemingly ignores judicial FIAT OF BOTH the highest court of the State, AND THE UNITED STATES.*"

*It appears that because this Honorable U.S. Supreme Court, previously denied certiorari re: the Murray vs. Sullivan case, it should consider the fundamental PROBATE issues, which make the Murray vs. Sullivan case a VOID NULLITY. If this Honorable Court will please SUPER-*VISE (if nothing more), — — "Justice can be done."

These two (2) cases (Murray vs. Sullivan) and Estate of Cassidy) — — represent two different situations. BUT, each case requires a "LEGAL" remedy and judicial cognizance of FUNDAMENTAL CIVIL RIGHTS.

Murray vs. Sullivan originated under an Agreed Statement of Facts, in which NO FACTS were contested.

> (quote) *"They disagree only as to the size of the share each CLAIMANT should receive".*
> (Murray vs. Sullivan 158 Me. at p. 100)

All interested parties agreed, and so did the Maine Law Court, (158 Me. at p. 100) that: — — —

(quote) *"The APPLICABLE STATUTE", —— "IS" — — — "R.S. (1954) Chap. 170. Sec. I, Sub. Sec. II," — which is the Maine Intestate Statute for the descent of Intestate property.*

THE MAINE LEGISLATURE plainly requires: — —

(quote) *"The remainder of which he DIES, seized, — — (no widow) — — the whole shall descend in equal shares to his children, — — AND to the lawful issue of a ("pre") deceased child by right of representation.*

"If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same DEGREE OF (class) kindred; IF NOT, according to the right of REPRESENTATION". — (My Emphasis)

It is alleged, in Murray vs. Sullivan that: — —

(quote) *"The Legislature seems to have made the same ASSUMPTION — — in the second sentence of the quoted statute".*
(158 Me. at p. 108-109)

(Question) Is the Law Court's ASSUMPTION in harmony with the Legislature's assumption?

Obviously, if the Legislature's LEGAL INTENT IS NOT, as applied in Murray vs. Sullivan; THE CASE IS A LEGAL NULLITY.

The appellant repeats, that the statutory application, which the Maine (LAW) Court relies upon; IS LEGALLY IMPOSSIBLE, in both the LAW COURT, AND THE PROBATE COURT.

Maine cases hold that "classes do not lapse"; — — nor can established probate facts be "set aside".

Hunt vs. Hunt 37 Me. at p. 343 (in infinitum)	Morse vs. Hayden 82 Me. at p. 230 (Statute prevents lapse)
125 Me. at p. 173 (Strout vs. Chesley) (Two classes)	Title 4, M.R.S.A. 203, and 251 Chap. 7 at page 199 (Legal Descent: — and probate jurisdiction)
Eacott Aplt. 95 Me. at p. 526 (no law court review)	Title 4, M.R.S.A. 403-406 (as law and justice require) (Appeal)

Rule #52 M.R.C.P. at page 216, (Findings of fact, by Probate Court, will NOT be set aside unless clearly erroneous.

However: — —

The opponent attorney's Brief at page #1 in the (Estate of Cassidy) case, admits:

(quote) *"This case must commence by a petition dated Oct. 16, 1969, filed with the Probate Court within and for the County of Penobscot".*

(quote) *"Within the time alloted by law an appeal and purported reasons for appeal were filed by the appellant". (R. 24. — — 125).*

My Note: —

The fact that the case was "procedurally" before every court in the state (which did have competent jurisdiction): — — I AM APPEALING, — for

constitutional supervision.

(1) The "dead end street presumption; which eludes the issues without required valid answers.

(2) The Ipse Dixit Fiat, so peculiar to this case was not based upon the science of Corpus Juris Law, — or stare decisis law.

The "father knows best" attitude, is prejudicial. It admonishes the appellant to "please go away" — — and let's forget about the Probate Court and my Constitutional rights to "due process"; — — and to have performed "EQUALLY" THAT WHICH THE LEGISLATURE WOULD MANDATE (in any other intestate situation) so that, "SPECIAL CLASS PRIVILEGE", may NOT prevail.

The attorneys admit at page #7, — — —

(quote) *"The Probate Court in its decree dated Nov. 22, 1969, denied the Appellant's Petition for a NEW DETERMINATION as to the final distribution of the Estate of John Cassidy, on the grounds that the issue presented by the Appellant's Petition WAS RES JUDICATA, as the RESULT of the decision of this (Probate) Court in Murray vs. Sullivan, supra".* (My Emphasis)

Please note, as previously stated herein; (Supra) — — "A NEW DETERMINATION", — — "AS TO" — — "MURRAY VS. SULLIVAN".

****WAS NOT REQUESTED.****

At page #11,

(quote) *"Probate Law has been BY-PASSED — —. A VALID PROBATE decree does not exist.* (*R. 59*)

In My Brief of Jan. 15, 1974 (to the Law Court, at page 17) — — quotes probate law, — — — which is not ELUDABLE. Obviously the alleged declaratory judgment, and the resulting res judicata, has nothing to do with this kind of law.

At page #18, and 19, (supra); — — under Title 14, M.R.S.A. Sec. 5960 Chap. 707 — "FURTHER RELIEF — — MAY BE GRANTED WHENEVER NECESSARY OR PROPER."

ORIGINAL (res judicata) is admitted; — —

In Judge Woodcock's (probate) decree of Oct. 16, 1969, — — (R. 17) he admits:

(quote) *"The facts in this case, the people who survive, are exactly the SAME PEOPLE who are mentioned in the AGREED STATEMENT OF FACTS, WHICH WENT TO THE LAW COURT and which was the BASIS of the decision in Murray vs. Sullivan."* (*R. 22*). (My Emphasis)

However: —

Can (2) two COURTS CREATE "ORIGINAL" JURISDICTION; — — AT TWO DIFFERENT TIMES? — AND, CREATE "NEW" ORIGINAL PEOPLE, — — "NEW" ORIGINAL FACTS; — — "NEW" ORIGINAL SUBJECT MATTER, — — NEW PROBATE PROCEDURE; AND CONSTITUTIONALLY APPLY SAME IN A VOID INTESTATE MANNER?

The Record will also show that all "claimants" agreed; to present the case to the Law Court — re: a question of statutory LAW.

And: that the Appellees herein agreed:

(quote) *"That this Court will fix the fees and disbursments in respect to these proceedings and will authorize plaintiff to pay from the principal of the trust estate such fees and disbursements"* *(R. 364)* *(2)*

This was the agreement:

I was appalled to learn of the case of Walker vs. Flynn Docket #6484, Penobscot County Superior Court, September 1966, — brought by the Appellee's lawyers: — to collect the unpaid balance due, re: a $300,000.00 ACCOMPLISHMENT fee.

See: Appellants
Brief to Law Court
September 1973
(page 100)

$300,000.00 in addition to the regular fees paid by the trustee — represents more money than "Watergate", — is all about.

In a letter dated Feb. 9, 1974, — from the Appellees attorney, (in reply to questions raised about the $300,000.00 "bonus"), the acting attorney said in part: —

(quote) *"As far as the legal fees paid by the Cassidy heirs to us are concerned, that very frankly is none of your business".*

However: — — at page #2, of the Attorney's Brief. (supra) — — they admit: —

(quote) *"The appellees CONCEDE that the appellant IS procedurally before the Law Court".*

[If nothing more, this admission represents that this separate probate action, WAS before the Law Court.)

The Cassidy Estate WAS PROBATED ON APRIL 13, 1918. — — — (R. 245)

****THIS PROCEDURE HAS NEVER**

BEEN TIMELY APPEALED.**

It was subtle and void for the Maine Law Court to continue to overlook all PRIOR — — "res judicata" PRO-

CESS AND PROCEDURE IN THE PROBATE COURT.

It was arbitrary to technically allege that a NEW DECLARATORY JUDGMENT was desired by the appellant, rather than a PROBATE DECREE WHICH MUST BE "VALID", — AS REQUESTED.

(Please see my Review Brief of Jan. 15, 1974 at p. 8 and 12 - 24) (R. 90-95)

*** STATUTORY LAW: — ***

Under Title 1, M.R.S.A. Sec. 72, (9) (Chap. #3; — statutory word; —

(quote) *"ISSUE; applied to the descent of estates, INCLUDES ALL LAWFUL LINEAL DESCENDANTS of the ANCESTOR".*

(Mr. Cassidy is my "direct" ancestor).

For Example: —

*** HERE, — is another unconstitutional fact —! "ALL" (of Mr. Cassidy's) ORIGINAL "lawfull lineal descendants (and his (2) original CLASSES, have been "legally" OMITTED. — ***

* (A "NEW" class created) *

FACTS, RE: A MATTER OF LAW are defined conclusively in: Salisbury vs. State 300 A. 2nd. 367 (Md. 1973)

At page 383; — (25-29). (supra)

(quote) *"A law which operates upon some persons or corporations, and NOT upon others — — or in the same CLASS is invalid. (Many U.S.C. cases)*

Facts are not found by a law court and certified to a probate court; all "original" procedure must come from a probate court.

Therefore, the "Supreme" Court of Probate was (only) presented an INTERLOCUTORY question of law; — — as a result of the survivor trustee's request for legal instructions.

These facts, issues, subject matter, and parties, had to be "originally" determined by the probate court of "original jurisdiction", as required by statute. BEFORE the Cassidy Will could be probated, — — or, presented to the LAW COURT; "ripe" for law.

If, these matters were not timely appealed, from the original jurisdiction, (AND THEY WERE NOT) — — many Maine cases hold that they cannot later be impeached or collaterally attacked.

THE TRUE MEANING OF (Bray vs. Spencer) — — 146 Me. 416 (1951) is that:

The doctrine of res judicata belongs to the "ORIGINAL PROBATE JURISDICTION" — — prior to the Murray vs. Sullivan case.

My Note:

Of Course I commenced a series of post proceedings; — in which I said that I, my heirs and assigns RESERVED FOREVER all rights to appeal this case.

The Record of this case, will prove that the Appellant herein was before the Probate Court of ORIGINAL jurisdiction, long before the case of Murray vs. Sullivan; — — (R. 412) — and (R. 421-429) — and that I was one of (quote) "HIS ONLY HEIRS AT LAW".

In fact, I appealed Murray vs. Sullivan (under the 14th Amendment) to the Supreme Court of the United States, for certiorari, (371 U.S. 947) — — 83 S. Ct. 501: (1963) — — without ANSWERS, (it was denied).

— If necessary, I pray for leave, to incorporate parts of the Murray case (supra) into this case, Estate of John Cassidy (supra).

JUDICIAL AMBIGUITY EXISTS:

(the intestate statute continues to constitutionally permit a

"pre stirpes" class claimant, to claim by right of representation, because I am:

(quote) " — *restricted only by the limitations fixed by the incorporated statute*".
(Murray at page 183)

Please consider: (I alleged) that the intestate statute COULD NOT BE INCORPORATED BY REFERENCE, — (into the Cassidy Will) — until; (quote) "AFTER" Mr. Cassidy had been dead for over (43) years. Obviously nothing can be incorporated (by reference) for the first time "THEN".

If this is what the Law Court is attempting to do, — THE ATTEMPT IS A VOID INCORPORATION (because the referred to, incorporated document, HAD TO EXIST, when the Will was executed. — NEVER (43) years after the man died — !

The Court also referred to (quote): " — A FUTURE LEGISLATIVE METHOD".

(158 Me. p. 108)

Frankly, no future legislative method "legally" exists (under the laws of Maine). This "LEGAL" presumption is prejudicial to original direct "lineal" survivors: — This kind of conjecture does violence to the statute.

This conjecture destroys the FACT that I was a DIRECT; — (quote) "per stirpes" class, — "lineal" descendant of the said John Cassidy, AT THE TIME OF HIS DEATH, (March 25, 1918).

Cassidy vs. Murray
(144 Me. 326)

** STATUTORY CLASSES ONCE FIXED BY LAW CAN NEVER LAPSE.**

(Hunt vs. Hunt 37 Me. at p. 343)

THE WHOLE CONCEPT, OF BOTH CASES, CRY FOR THE ONLY LEGISLATIVE "LEGAL" REMEDY; WHICH CAN SO EASILY BE APPLIED (AS AN EXISTING REMEDY) WHETHER OR NOT, THE ESTATE *IS ACTUALLY INTESTATE.*

****

** IN BRIEF**

"PRO SE — GEMS"

JURISDICTION, IS OF TWO PARTS:

(1) —— jurisdiction of the subject matter; (it can never be waived).

(2) — jurisdiction of the interested parties; (can be created only by consent, stipulations, or "legal" action.)

(I plead innocent on all counts)

This case (Estate of Cassidy) primarilly concerns Jurisdiction of the subject matter, which has been ESTABLISHED and proved in a probate court, as early as April 1918. — It cannot be "by-passed".

(Neely's Estate, 136 Me. 79
1 A. 2nd 772)

The Maine Law Court had no LEGAL jurisdiction over any party who was NOT, (quote) a — "LINEAL" DESCENDANT, of the said John Cassidy.

(deceased March 25, 1918)

Subject Matter: — also concerns the "APPLICABLE" Maine Intestate statute; which is always "standing by" — PROSPECTIVELY and applicable, at any time — a Will ceases to be effective and without future testate direction or control. Such a situation existed on June 9, 1961, when Mr. Cassidy intentionally attempted to let the law take its own course. (313 A. 2nd at page 338, 435)

(quote) *"IN THE SAME MANNER, and in the same proportions", — as the LAWS OF THE STATE OF MAINE "LEGALLY" PROVIDED, FOR (HIS) "LINEAL" DESCENDANTS, TO TAKE (HIS) INTESTATE PROPERTY.*

****

INTESTACY, IS OF TWO PARTS:——

> *The Cassidy Trust, existed only for the duration of the lives of his "IMMEDIATE" CLASS; — composed of (4) surviving children.*

THE STATUTORY "MEDIATE" CLASS WAS FREE, AFTER THE TRUST TERMINATED.

****

(ONLY, testamentary SILENCE, and the "Same Manner" of the inexorable intestate statute prevailed, AFTER the Trust Terminated); — re: THE "MEDIATE" CLASS RIGHT; — TO "LEGALLY" TAKE (1/3) OF THE ESTATE BY "REPRESENTATION; — OR BE (LEGALLY) OMITTED.

A surviving WIDOW, would present a better example, in the Cassidy situation. (If a widow had survived him —!) The statute would legally mandate her rights, as of March 25, 1918; in the (quote) "SAME MANNER". AS IT CONTROLS THE "MEDIATE" CLASS RIGHT.

OMISSION EXISTS: THE "MEDIATE CLASS" SURVIVOR'S STATUTORY RIGHTS, AS CLAIMANT, CONTINUES TO BE FIXED BY LAW: — AS THOUGH, NO TRUST EVER EXISTED.

The Appellant herein, being Mr. Cassidy's ONLY *DIRECT* — "MEDIATE CLASS" SURVIVOR; — "in esse" — is now LEGALLY FREE from the TERMINATED Cassidy Trust.

I am,

> (quote) " — *restricted only by the (class) limitations fixed by the incorporated statute*".
>
> ***** (Murray at page 103)

STATUTORY CLASSES, — NOT PEOPLE, — ARE INVOLVED HERE: — Being only a mere (unnamed) member of the "MEDIATE CLASS" which can not legally lapse; (Hunt vs. Hunt, etc.), — I have the same LINEAL "statutory" right which I have always had.

However, what ever rights the remote survivors of the DECEASED DIRECT "IMMEDIATE" CHILDREN may have; is not for me to promulgate, or presume; IF AMBIGUITY EXISTS, IT CONCERNS THE CLASS (or no class) to which the remote survivors may claim under. — which is of no concern to me.

Therefore: — MY LEGAL "CLASS" RIGHT, as a direct "LINEAL" CLAIMANT CANNOT BE "WAIVED", or legally lapsed, by me, or any court.

Certainly I have reserved my CLASS RIGHT which ("in the eyes of applicable intestate law") (and the probate laws of the State of Maine) could have been applicable: —

Namely:

(1) On March 25, 1918; (and/or) —

(2) — on June 9, 1961; — and today on May 4th, 1974; —

(3) and forever after, (quote) "IN INFINITUM" (Hunt vs. Hunt) etc.

The stipulated word "LINEAL"; (if applicable) — must mean in a DIRECT LINE of descent BY CLASS, (or) CLASSES, from the deceased, starting at the true time of his death; — because no class, (IN A LINE OF DESCENT) could be legally omitted.

No one, but no one, (in the whole world) can now legally claim to be *as* DIRECT; — OR "LINEAL" — ("IN A LINE" OF DESCENT from Mr. Cassidy) — as your Appellant herein.

That which I claim is NOT through a direct "immediate class" deceased survivor. NO, NO —!

The descent laws of Maine, clearly restrict, and require and restrict me (alone) to claim "by right of representation" — DIRECTLY FROM MR. CASSIDY; — and not "through" my mother, who "pre" deceased Mr. Cassidy.

I am Mr. Cassidy's *only* direct surviving lineal heir. No other remote claimant can make such a LEGAL CLAIM. (So, there now —!)

****

As stated in Burt Co. vs. Burrows Corp.
158 Me. 237

> *"There is a strong policy running through the Maine cases just as through the federal cases, insisting that only 'final' judgments are RIPE for appellate review".*

BUT NO APPEAL EXISTED, re: —

> THE MURRAY VS. SULLIVAN CASE, — THE SUPREME COURT OF PROBATE SIMPLY STATED THE FACTS, — AND MADE NO JUDGMENT, OR OPINION.

The JUDGMENT which the jurisdiction of the (Supreme) Court of Probate required WAS A PRO-FORMA, — *LEGAL* "MANNER" — under which:

> (quote) *" — the laws of the State of Maine"* *** *would permit Mr. Cassidy's unnamed lineal claimants to take his (quote) "INTESTATE PROPERTY".* ***

NOTE:

> The "legal" manner, restricted the claimants to first qualify as IMMEDIATE and/or MEDIATE CLASS claimants. — there is no "FUTURE CLASS".

Obviously:

> Only your appellant, directly qualifies as a MEDIDATE CLASS CLAIMANT, (all others were more remote).
>
> It was not for the Law Court to find what Mr. Cassidy "SHOULD" have intended: but what he "legally" meant, by what he ACTUALLY SAID:— if "legally" possible. (re: Estate of John Cassidy, at p. 102)
>
> Whereas the Supreior Court found and presented the same facts and subject matter (in 1961); which the lower probate court had found (in 1918); the Law Court had a compulsory duty to define a "PRO FORMA" LEGAL MANNER of distribution, for the probate courts; — IF, IN FACT,

LEGAL CLASSES EXISTED. *** (IF NOT THE ESTATE HAD TO BE "REALLY" INTESTATE). *** ONE DIRECT CLASS *DOES* CONTINUE TO EXIST.!

NO JUDGMENT EXISTED TO BE APPEALED. IF THE FACTS PRESENTED, (AND SUBJECT MATTER) WAS NOT ACCEPTABLE TO THE LAW COURT; — *** THE FINDING COULD NOT BE "RIPE" FOR LAW; — OR, ORIGINALLY REVIEWED BY A "LAW" COURT.

If the Law Court had just answered "the question of law" — and left testamentary presumptions for the Supreme Court of Probate to determine; — the Supreme Court of Probate could have decided the case, within its own exclusive jurisdiction; — with opportunity for appeal, re: any questions of law.

As plainly stated in

12 Encyclopedia of Pleading and Practice, page 171,

" — the jurisdiction of a court depends upon the state of affairs at the time it is invoked, and if the jurisdiction once attaches to the person and the subject matter — — — litigation, — — — will not operate to oust the jurisdiction already attached".

A "SUPREME" COURT OF PROBATE, — CANNOT SURRENDER ITS JURISDICTION TO A "SUPREME" LAW COURT.

(R. 131) (R. 428)

NOR, CAN A LAW COURT CREATE A "NEW", — "FUTURE CLASS", — FOR THE MAINE LEGISLATURE.

MY APPEAL PLAINLY REQUESTS APPLICABLE STATUTORY LAW, WHICH A PROBATE COURT MAY (VALIDLY) APPLY.

(quote) *"Any enactment to which the state gives the force of law, — is a statute of the state, within the meaning of the acts of Congress relative to appellate jurisdiction of the Federal Supreme Court."*

Stevens vs. Griffith
4 Sup. Ct. — 283, 284
111 U.S. 48
28 L. Ed. 348

(125 U.S. 18)
(31 L. Ed. 607)

"A statute will not be given a construction which will render it unconstitutional or unreasonable if it is succeptable of reasonable construction".

(45 A.L.R. 189)
Words & Phrases
25 R.C.L. Sec. 256-257
(1935 Supp.)

The Maine Law Court (itself) has created more confusion and ambiguity than it attempted to solve. *** MY CLASS SITUATION IS NOT AMBIGUOUS.

THEREFORE:

ONLY this Honorable Supreme Court can say what is illegal: — (when a Supreme Law Court does something illegal) — LIKE OMITTING THE DIRECT "MEDIATE" CLASS, (in esse), inherent to the (quote) "applicable" Maine INTESTATE statute.

ALSO, WHEN IT REFUSED TO ANSWER; — OR, (quote) "PERMIT" — the question of law as Reported, under the (quote) "APPLICABLE" statute, to operate, pro forma.

Murray vs. Sullivan
(158 Me. at p. 107)

THE LEGISLATIVE INTENT CERTAINLY MANDATES A CAUSE FOR OBLIGATORY "CIVIL" CONDUCT; — EVEN FOR A LAW COURT.

****

The nature of the case and the Maine Law Courts rulings may bring the case within the scope of Rule #30 - #31 U.S.C., in the discretion of this Honorable Court. The relief sought is not available in any other court, nor can it be had through any other appellate process.

For Example: ("in brief")

> Because a state law court refuses to "permit" a supreme court of probate to apply the valid "applicable" Maine intestate statute:— which in turn OMITS the only direct MEDIATE CLASS heir; — which destroys my "Civil" rights, under the protection of Constitutional laws, of both State and Nation. (28 U.S.C. Sec. 2403)

****

THE WHOLE CASE HINGES UPON TWO WORDS:

"SHOULD", — — and — — "LEGAL"

"SHOULD", — has been "cancelled out"
(313 A. 2nd at p. 437)

"LEGAL" — has been "added"

The (quote) "legal effect" of that which the (quote) "the laws of the State of Maine" CONTINUED TO REQUIRE (43, years after Mr. Cassidy's death) — MUST BE THE APPLICABLE "LEGAL" ANSWER.

NOT — some conjecture which the law court supposed Mr. Cassidy (quote) "SHOULD" have viewed, or intended that the Maine intestate statute — "MIGHT" provide.

(If he "as though" had intended to die (43) years after he ACTUALLY DIED.)

*** NO PROOF OF THIS EXISTS ***

Without the presumptive word "SHOULD" only the (quote) "LEGAL EFFECT" continues "NOW", to be APPLICABLE.

Certainly I have reserved my CLASS RIGHT which "the eyes of the applicable intestate law" (and the probate laws) of the State of Maine required; — at all times:

Namely:

and forever (quote) "IN INFINITUM"
(Hunt vs. Hunt) etc.

Please see Goodwins Estate (1952) 147 Me. 237,
(86 A. 2nd 88)

(quote) *" — The rights of DESENT flow from the LEGAL status of the parties, and where the status is fixed, the LAW supplies the rules of DESCENT, with reference to the situation as it existed at the death of the decedent."*

(*Mr. Cassidy said "the same manner" as FIXED BY THE LAWS OF MAINE*)

Please NOTE:

4 M.R.S.A. Sec. 7;

(quote) *"The Supreme Judicial Court may Exercise its jurisdiction according to the common law NOT INCONSISTENT with the Constitution, or any STATUTE".*

"It may issue all writs and process, NOT within the EXCLUSIVE jurisdiction of the Superior Court, necessary for the furtherence of justice on the execution of the LAWS, in the name of the State."

The Supreme Judicial Court is ONLY permitted to interpret the laws AS ENACTED by the Legislature and determine if they are within CONSTITUTIONAL requirements, or have been PROPERLY APPLIED in the case before the Supreme Judicial Court.

A want of JURISDICTION IS FATAL, in every stage of cause and *ALWAYS* OPEN FOR CONSIDERATION BY COURT.

Stinson vs. Taylor (1941)
137 Me. 332
(17 A. 2nd 700)
Hutchins vs. Hutchins
136 Me. 513
(4 A. 2nd 679)

Exparte Smith (1950)
145 Me. 174
(74 A. 2nd 225)

State vs. King
(135 Me. p. 17 - 18)

The case of Murray vs. Sullivan exists as a LEGAL NUL-

HOW CAN THE LAW COURT, — ** GET PAST, THE SUPREME COURT OF PROBATE, WITH THE FACT: THAT —

(quote) *"it would be INCONGRUOUS TO PERMIT the (intestate) statute to operate — ".*
Murray vs. Sullivan
(158 Me. at p. 107)

THIS IS NOT A
"PROBATE" FACT

IT IS NOT A
"LEGISLATIVE" FACT

IT IS NOT A
"LEGAL" FACT

WHICH BRANCH OF MAINE GOVERNMENT HAS AUTHORITY TO MAKE SUCH A PRESUMPTION —? THE LEGISLATURE OR THE JUDICIAL?

ARGUMENT

No Appeal, from the court of original jurisdiction has never been taken.

****

A CASE, IN POINT IS:

As stated in Cutting vs. Tilton 188 Me. 91 (106 Atl. 113);

(quote) *"Courts of Probate are wholly creates of statute".*

"While provision is made by statute for appeal from Probate Court of ORIGINAL JURISDICTION to Supreme Court of Probate. IT IS SIGNIFICANT THAT NO PROVISION IS MADE FOR ANY APPEAL FROM THE SUPREME COURT OF PROBATE ITSELF AN APPELLATE COURT, TO THE LAW COURT".

(M.R.S. Chap. 67, Sec.31) (1919)

(quote) *"an appeal from an appellate court would be somewhat anomalous and such proceeding, — cannot be presumed as ALLOWABLE practice".*

FOR A "LAW" COURT TO ASSUME "ORIGINAL" JURISDICTION — AND BY-PASS FACTS FOUND AND ESTABLISHED IN TWO PROBATE COURTS; (AND AGREED TO BY ALL PARTIES) — ANY FURTHER INQUIRY WAS CONFINED TO MATTERS OF LAW.

(quote) *"If there was any evidence, its sufficency was a question of FACT upon which the finding of the (PROBATE) Court is CONCLUSIVE, NOT TO BE REVIEWED BY LAW COURT".*

Cutting vs. Tilton Eacott Appellant
118 Me. at page 94 (95 Me. 522)
(My Emphasis)

HOWEVER:

Under Section; #5961.

(quote) *"When proceeding under this Chapter (707) involves the determination of an ISSUE OF FACT, such issue may be tried and determined in the same manner as issues of FACT are tried and determined in other civil actions in the COURT in which the proceeding IS PENDING".*

M.R.S.A. (1954), C. 707, — Sec. 46) — (Please see, Dyer Brief to Law Court, for Review: — Jan. 15, 1974, at page #6 and 18, 19-20.

SURELY, — IF MR. CASSIDY,

(quote) *"SHOULD" have viewed all of his own LINEAL DESCENDANTS — (as though he DIED (43) years after his actual death date: — HE MADE NO MENTION OF IT IN HIS WILL.*

THIS "NEW" DEATH DATE PRESUMPTION: — IS A CRITICAL MATERIAL FACT OF SUCH VITAL IMPORTANCE, THAT A RIGHT OF APPEAL CANNOT BE DENIED (whether or not, the Law Court, could or could not review, or create such an "original" FACT.

The PRESUMPTION

CONSTITUTES

ERROR OF LAW; —

WHICH IS SO UNCONSTITUTIONAL

THAT: Murray vs. Sullivan

CAN ONLY BE

A "LEGAL NULLITY".

THIS IS WHAT I WANT:

(quote) *"It is entirely within the province of the Legislature to determine who shall and who shall not take the estate, and the PROPORTION in which they may take, and whether severally, or as joint tenants, per capita, or, PER STIRPES. In the absence of CONSTITUTIONAL prohibition, the LEGISLATURE is supreme, and may dispose of an INTESTATE decedent's estate after payments of his debts to ANY CLASS OR CLASSES OF his kindred, to the exclusion of any class, or CLASSES".*

(State vs. Hamlin
86 Me. at page 505)
(My Emphasis)

OBVIOUSLY:

The statute is applicable only to a CLASS, or, CLASSES.

Obviously; — what ever the Maine Law Court "thinks" Mr. Cassidy should have intended: — the statute must be applied to an IMMEDIATE CLASS (and/or) TO A "MEDIATE" CLASS.

TWO (2), classes did exist, at the time of his death.

(Cassidy vs. Murray 144 Me. 326)

Under 4 M.R.S.A. Sec. 57,

(quote) *"The following cases ONLY come before the court as a COURT OF LAW. Cases on appeal FROM the Superior Court — questions of LAW arising on REPORT of cases, including civil cases, INTERLOCUTORY orders on rulings of such importance as to require the opinion of the justice, review by the law court BEFORE any further proceedings in the action: — etc."*

"Whenever, in the opinion of the law court, the ENDS OF JUSTICE REQUIRE, it may remand any case to the court BELOW or any justice thereof for the correction of any errors in pleading or PROCEEDURE."

The Law Court has *NO* supervisory jurisdiction over INFERIOR COURTS, (or, Probate Courts) such jurisdiction being vested in the Supreme Judicial Court sitting at nisi prius, since the Law Court is A COURT OF REVIEW, AND *NOT OF "ORIGINAL" JURISDICTION* AND "CANNOT" EXTEND ITS STATUTORY POWERS.

Edwards Appellant (1945)
141 Me. 219
(41 A. 2nd 825)

Supreme Judicial Court sitting as a court of LAW, "IS NOT" authorized by any general statute to ISSUE PROCESS in aid of its JURISDICTION.

One ANOMALY, which makes Murray vs. Sullivan VOID:

Is that the Law Court HAS CREATED ITS OWN "NEW" FACTS; which preclude the conclusiveness of the facts presented to the Law Court, by the "ORIGINAL" and "SUPREME" probate courts, THESE FACTS WERE:

(quote) *"NOT TO BE REVIEWED BY LAW COURT"* (Cutting vs. Tilton) (supra)

"A NOT ALLOWABLE PRACTICE"

I have constantly and continuously requested relief from every available court with competent jurisdiction to grant relief. It is my contention that "orginale" and "final" jurisdiction must rest in the Probate Courts.

(R. 4, to R. 23)

But the probate courts allege INFERIOR jurisdiction (R. 22) and the Law Court has again denied me the opportunity for appeal, or relief, or remand.

(Re: Estate of John Cassidy) (supra)
(Dyer Review Brief Jan. 15, 1974 at page 15 to 25)

14 M.R.S.A. Sec. 5960 to 5063 — provides relief whenever necessary, by a court HAVING JURISDICTION to grant relief where rights have been adjudicated by a declaratory judgment.

In the Case of State vs. Hamlin 86 Me. at page 506.

(quote) *"Our statute of Wills authorizes certain persons to make wills, and prescribe the mode of their execution.*

At page 507 (supra)

The act, section 12, provides for an appraisal of the estate subject to the exercise, upon application to the PROBATE COURT. The probate court having JURISDICTION of the settlement of the estate, IS AUTHORIZED to, "hear and determine all questions in relation to said tax that may arise," etc. — "subject to APPEAL as in other cases".

"These provisions fully secure the RIGHTS of all parties interested, and satisfy the requirement of "DUE PROCESS OF LAW". The act applies equally to citizens of this and other states, and therefore is not in conflict with any provision of the FOURTEENTH AMENDMENT, that, "NO STATE SHALL make or ENFORCE any law which shall abridge the privileges or immunities of CITIZENS of the United States".

State vs. Hamlin (Supra)

(My Emphasis)

THEREFORE THE SIGNIFICANT AND MANDATORY FACT THAT THE CASSIDY ESTATE WAS "PROBATED", (April 1918), (AND THAT *NO* TIMELY APPEAL OF THE FACTS OR SUBJECT MATTER WAS MADE) — certainly precludes, any "NEW" DEATH DATE PROBATE PROCEEDURE.

(Please see page 1, Dyer Brief to Maine Law Court, (1973): — and (R. 126 to 140) — (R. 380) — (R. 244 to R. 253).

****

In the (Estate of Cassidy) case (1974) — at page 439; — the Maine Law Court supplied the incriminating (quote) "LEGAL" proof; — that whatever the Court presumed Mr. Cassidy "SHOULD" have intended, — is NOT "res judicata;" — in fact, the Court should not have given any "HEED" to what Mr. Cassidy (quote) "MIGHT" or "SHOULD" have intended. IT WAS THE (quote) "LEGAL EFFECT", OF WHAT HE ACTUALLY SAID, WHICH IS APPLICABLE.

Therefore there is no rational or legal reason WHY: any person who continues to qualify as a DIRECT MEDIATE CLASS survivor, can not have performed that which CONSTITUTIONAL law requires;

***because the mediate class, is NO LONGER "out trusted", and a whole statutory class cannot LEGALLY be OMITTED FROM THE APPLICATION OF THE INTESTATE STATUTE.

The Law Court, has done a "de novo" a probate (equity) appeal; — FOR the "Supreme" Court of Probate, — "without right of appeal". — ! (IMPOSSIBLE) !!!!!!!

A right of appeal is missing.

A proceedural step is missing.

A "SUPREME" LAW COURT, has not only taken "ORIGINAL" jurisdiction; — it has told a "SUPREME" PROBATE COURT, how it must write a "NEW" decree.

A law Court refuses to remand and denies everything as "res judicata". A probate court admits it is hopelessly (quote) "INFERIOR to the Law Court".

A CONFLICT OF JURISDICTIONS EXIST.

If the Cassidy will did not have inherent, a LEGAL REMEDY: — or if the will appeared to be void for vagueness; — the Legislative branch of Maine government PRECLUDES (any court) from creating a (quote) "NEW

CLASS" — (158 Me. at p. 102) or a "FUTURE LEGISLATIVE METHOD" — (158 Me. at p. 108) so that remote claimants, may be permitted "special privileges" (as intestate claimants who cannot qualify) as either DIRECT "IMMEDIATE" (and/or) DIRECT "MEDIATE" CLASS CLAIMANTS.

THE WHOLE CONCEPT BY-PASSES, — EVERYTHING PRIOR; — EVEN THAT WHICH THE LEGISLATURE INTENDS TO PREVENT.

I am aware that a new line of cases — have been appearing which attempt to CONSTRUE "Judicial" law (instead of Legislative law) , — in a manner of descent, which testators "SHOULD" HAVE INTENDED; for intestate statutes to provide. During this "Watergate" era; a judicial branch of government, — should not have unlimited power to infringe upon a legislature's INTENT and PUBLIC POLICY.

In large estates, where the opportunity to sway a case to the "right", or to the "left", — is involved, the OBVIOUS LEGISLATIVE MANDATE OF A STATUTE, SHOULD BE REQUIRED TO PREVAIL OVER "PRESUMED" CONSTRUCTION: — in the interest of constitutional justice, if nothing more.

Questions: —

This Appeal, re: Estate of Cassidy 313 A. 2nd 435; — frankly asks;

> Can a LAW COURT, RE-PROBATE an estate; (which was ONCE probated and not timely appealed)? CAN the inexorable MANNER of the Maine INTESTATE STATUTE, (43) years AFTER any Maine citizen's death, OMIT THE "MEDIATE CLASS", — when, "in esse"? Does the statute have a continuing prospective effect, on the basis of the FACTS and SUBJECT MATTER as found, proved, and certified (by the Probate Court of ORIGINAL JURISDICTION; — and as presented to a Law Court, re: a (quote) "question FOR LAW?

****

How can a law court create new "subject matter" for a probate court, and force people into a "CLASS" that does not LEGALLY EXIST — ?

(Colonial Bank vs. Stevens
316 A. 2nd 768)

In brief: —

Mr. Cassidy died on March 25, 1918. — The Law Court said in Murray vs. Sullivan 158 Me. at p. 102, that he (quote) "SHOULD" have viewed his lineal descendants as

a NEW CLASS, ("restricted only by the limitations fixed by the incorporated statute").

(quote) *"AS THOUGH, the testator's death occurred immediately AFTER the death of his LAST SURVIVING Child".*

And, the statute (quote) "MUST be so applied".

(ipse dixit)

Thus; according to the Law Court:

The facts as presented by the Supreme Court of Probate, and the Probate Court of ORIGINAL jurisdiction, (inferior courts to the Law Court) — (R. 22) — have no jurisdiction; except to allow the Law Court to REPROBATE the Cassidy Estate, — (43) years after Mr. Cassidy's death; — "AS THOUGH" he then DIED.

****

RESEARCH: —

In all of my research, I have not found a case, more to the point, than a recent Connecticut case.

(Colonial Bank vs. Stevens
316 A. 2nd 768)

****

Question, (g) in the case of Colonial Bank (supra) seems to be appropriately addressed to my Appeal. And, at page 775, of Colonial (supra) (para. (6) states):

(quote) *"A construction of a will which will avoid intestacy is to be sought".*

****

BUT, Mr. Cassidy STIPULATED INTESTACY! —

(quote) *"IN THE SAME MANNER" — — "PROVIDED BY THE THEN EXISTING LAWS OF THE STATE OF MAINE FOR THE DESCENT AMONG (HIS) LINEAL DESCENDANTS OF (HIS) INTESTATE PROPERTY — ".* (158 Me. at p.)

The first part of his will, represented a TRUST for his children's lives:

The second part of his Will, — LET THE LAW THEN TAKE ITS COURSE.

The Colonial case (Supra) plainly states:

(quote)

***"*But we cannot RE-WRITE the will of the testator nor can we SUPPLY a dispositive provision which a will has OMITTED.*

*A construction plainly REQUIRED by the terms of a will CANNOT BE AVOIDED because it leads to INTESTACY".****

THE INTESTATE MANNER, REQUIRED in the Colonial case: — is the "SAME MANNER" which Mr. Cassidy specified.

The Maine Law Court in (Estate of Cassidy) plainly admits: at page 439, that:

(quote) *It could give no heed to what he MIGHT or SHOULD have said".*

When Mr. Cassidy "SHOULD" have intended to DIE, — or when his estate "SHOULD" have been PROBATED, — is not only VOID; — it is UNCONSTITUTIONAL. It denies due process. It denies a direct "per stirpes" CLASS survivorship rights and the "EQUAL" protection of Maine law, to take (as required by the intestate statute) "BY RIGHT OF REPRESENTATION." (158 Me. at p. 100)

The FACT that I directly survived Mr. Cassidy, as a MEDIATE CLASS CLAIMANT is not ELUDABLE; — if constitutional law has any significance.

The constitutionality of a stutute cannot generally be questioned. (Constitutional Law, Key 32. (2))

Statutory law, is public policy, designed by legislature to promote the public interest.

A judicial determination of WHEN and HOW any man's intestate property "SHOULD" be distributed under the (quote) "same manner" of the State's "public policy"; becomes automatically a matter of public interest; — which draws into question the constitutionality of the state's LEGISLATIVE INTENT.

This Appeal: (Estate of Cassidy) draws into consideration critical statutory probate law which is significantly essential.

For example: —

Title 4 M.R.S.A. Sec. 251, Mandates that Probate Courts:

(quote) " — *may take the probate of wills — on the estates of all DECEASED persons, who AT THE TIME OF THEIR DEATH were inhabitants of his county — died leaving estate to be administered in his county, or whose estate is afterwards found therein; and HAS JURISDICTION of all matters relating to the settlement of such estates*".

(Probate Courts have an ORIGINAL *jurisdiction in probate measures that is EXCLUSIVE).

*Petition of Kimball (1946)
142 Me. 182 (My Emphasis)
(49 A. 2nd 70)

*(The Supreme Judicial Court, sitting in EQUITY cannot establish an UNPROBATED will. — and any party claiming relief under such a will MUST FIRST PROBE IT in the probate court.)

Cousins vs. Advent Church

93 Me. 292
45 A. 43

SURELY NO TIMELY EQUITY APPEAL EXISTED, (in

the Cassidy situation) — HOWEVER, — in any event an appellate probate court had to first "PROBE" it in the probate court; — NOT, A LAW COURT.

*(If in Law there is no jurisdiction, parties may NOT WAIVE jurisdiction).

Legualt vs. Levesque
150 Me. 192
(107 A. 2nd 493)

Hutchins vs. Hutchins
141 Me. 183
(41 A. 2nd 612)

(Wills do NOT become operative until proved and established by court of probate, or APPELLATE Supreme Court of Probate.

Appeal of Martin
133 Me. 422
(179 A. 655)

AS PLAINLY STATED: (in Neely's Estate) — Decrees of probate courts in matters of probate, within the authority confirmed upon then by law, ARE, when NOT APPEALED FROM, CONCLUSIVE and are binding upon the common law courts, and NOT REVERSABLE by writ of error or certiorari nor can they be SET ASIDE IN EQUITY even for fraud.

However: —

> The probate court AFTER time for appealing from the decree has PASSED, had the power, upon petition SUBSEQUENTLY filed, notice, and hearing, to OPEN and VACATE A PRIOR decree which is CLEARLY SHOWN TO BE WITHOUT FOUNDATION IN LAW, OR FACT, and derogation of LEGAL RIGHT.
>
> Neeley's Estate (1938)
> 136 Me. 79
> (1 A. 2nd 772)

(THIS, I HAVE ATTEMPTED IN, (Estate of Cassidy 313 A. 2nd 435)

THIS IS ONE OF THE ISSUES WHICH the case of (Estate of Cassidy) (supra) —, bottoms out upon. Because NO EVIDENCE ever existed, to clearly show that the ORIGINAL PROBATE JURISDICTION, (PRIOR TO "Murray vs. Sullivan") was without foundation in LAW, or FACT, or in "legal" right.

> (I claim res judicata "a la", the original (unappealed) jurisdiction of the probate court. — prior to the Murray vs. Sullivan case).

The Law Court, plainly states:

In re: Estate of Cassidy
313 A. 2nd 435, (2) at page 338.

(quote) *"14 M.R.S.A. Sec. 6051 (10) confers on the Superior Court JURISDICTION to grant appropriate equitable relief in matters relating to the construction of wills".*

(quote) *"We hold that the Superior Court had jurisdiction to enter to its PRIOR decree of distribution".*

BUT: THE APPELLANT HERE-IN HOLDS THAT THE WORDS, "CONCURRENT JURISDICTION" —: DOES NOT MEAN "EXCLUSIVE" OR FINAL JURISDICTION to create "ORIGINAL" JURISDICTION . . . ! (for that would negative the right to resort to the law court) (the lower court has original FINAL jurisdiction; — subject only to a timely appeal to a court of equity.

Norris vs. Moody (1921)
120 Me. 151
(113 A. 24)

14 M.R.S.A. Sec. 6051, (13): — plainly states re: Equity Jurisdiction, that equity courts:

(quote) *" — have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is NOT a plain, ADEQUATE and complete remedy at LAW".*

IF THE LEGISLATURE'S STATUTE IS NOT APPLIED AS:

(quote) " — *a plain ADEQUATE and complete remedy at LAW;*"

— the Cassidy Will would have to be VOID FOR APPLICABILITY, (or vagueness).

However Law Court ADMITS: —

(quote) *"This Court in Murray vs. Sullivan examined, discussed, and DETERMINED THE LEGAL effect of what Mr. Cassidy said".* (Estate of Cassidy) (supra)

"It could give NO HEED to what he MIGHT or SHOULD have said".

When this Honorable Court said that: — It said just exactly what it should have said in Murray vs. Sullivan (supra), and exactly what the Probate Court should have said in Estate of Cassidy.

THE "LEGAL" EFFECT: (of what he actually said) — — IS — —

(quote) *"A PLAIN ADEQUATE AND COMPLETE REMEDY AT LAW". (The applicable media is the message!*

The testamentary doctrine of heirs, who take "INSTEAD OF" SURVIVORS; — is contra-indicative of the doctrine of INTESTATE heirs, who LEGALLY MUST TAKE "UNDER" and ancestor; — instead of "through",

a survivor. See: — Strout vs. Chesley (125 Me. at p. 125)

Mr. Cassidy did not NAME any person or class; — he let the LAW take its "SAME" (LEGAL) COURSE.

Therefore all of his "lineal" claimants (under the "applicable" statute) are restricted by law, to take UNDER an heir, — and not INSTEAD of an heir.

In, the case of Murray vs. Sullivan, the claimants take incongruously, — "INSTEAD OF" the direct ancestors: *including* the Appellant herein who IS A DIRECT DESCENDANT; — not a remote descendant.

It is to be noted: That the "applicable" statute contemplates ONLY (2) CLASSES of DIRECT SURVIVORS; —

(1) "IMMEDIATE" CLASS
and
(2) "MEDIATE" CLASS

Note: under the "applicable" statute:

When all heirs are of one class; distribution is said to be "per capita". When two (2) classes are present, (in esse) the distribution is "per stirpes", (by steps).

WHEN IMMEDIATE CLASS SURVIVORS (die before

final distribution) and are survived by issue; — the issue takes by substitution "UNDER", the intent of the LAW.

Obviously, a direct MEDIATE CLASS survivor can not take "under" a survivor.

Legally the issue (of a child who "pre" — deceased the intestate) IS REQUIRED BY LAW, TO TAKE "DIRECTLY" FROM THE DECEASED INTESTATE.

Final distribution, may be made one day, or one year, or (43) years, after a man dies intestate.

Rational, legal application, is often confused with a multitude of "future interest" estates; which primarily concern NAMED" PERSONS.

Such as:

"to my wife for life estate, (etc.) — and upon her decease to my brother GEORGE, (life estate, etc.) — and THEN to "MY" heirs: —??"

Such a situation; involves the grantor's COLLATERAL lineal descendants: who have to be "George's" survivors at the time of GEORGE'S DEATH, and not at the time of the grantor's death.

Future Interests
are generally
testamentary: —
a "LEGAL" estate
(by operation of law)
has no place to
go: — EXCEPT
AS INTESTATE
PROPERTY.

**** (as in the Cassidy
situation) ******

THE MAINE LAW COURT WANTS FOR (legislative) JURISDICTION: — BECAUSE IT WILL NOT APPLY THE (quote) "APPLICABLE" INTESTATE STATUTE:

(quote) " — *it would be INCONGRUOUS to PERMIT the statute to operate* — "

WHY —? Is the statute void, or unconstitutional? As quoted; — under Title 4, M.R.S.A. 49, (Chap. I)

"Supreme Judicial Court cannot assume nor infer a FACT not agreed upon by the parties"

Levesque vs. Nanny
142 Me. 390
53 A. 2nd 703

"Classification by the (Maine) LEGISLATURE was expressed as valid, IF ANY STATE OF REASONABLE FACTS, can be conceived to sustain it".

Maine vs. King
(135 Me. p. 17018)

"The statute fixes its own rules" — and by these rules we must be governed.

Messer vs. Jones
88 Me. 383

That which the legislature seeks to prevent is the intent of the law.

106 Me. 209
135 Me. at p. 18

As stated: in Nathan vs. Martin, 317 A. 2nd 110; — Equity and LAW should not be placed in position of competing for litigation.

(quote) *"our judicial system does not enjoy such luxury".*

(quote) *"We have no more right to decline the exercise of JURISDICTION which is given, than to USURP that which is NOT GIVEN".*

Opinion of Justices
70 Me. 598

CONCLUSION:

The meaning and legal force of the case of Cutting vs. Tilton 188 Me. 91, (106 A. 113) conclusively proves why the Maine Law Court's review of all prior probate precess, proceedure, facts, subject matter and essential law: — WAS NOT REVIEWABLE — AND, NOT ALLOWABLE (CONSTITUTIONAL) PRACTICE.

The Law Court's construction of how Mr. Cassidy (quote) "SHOULD" have viewed his "LINEAL" descendants, (in the eyes of the applicable intestate statute) — " AS THOUGH" he died (43) years after he actually died: — IS NOW ADMITTED by the Maine Law Court, in the case of (Estate of John Cassidy, at page 439) — that the Court (quote) " — COULD GIVE NO HEED TO WHAT HE MIGHT OR SHOULD HAVE SAID":

*** IS CONCLUSIVE.

The humble (and perhaps humiliating) fact is: — that the Maine Law Court HAS PRACTICED exactly that, which it had NO JURISDICTION TO REVIEW; and SHOULD "NOT" HAVE DONE.

The case of Murray vs. Sullivan exists is a LEGAL NULLITY, — contrary to the best interests of Justice, and constitutional public policy.

It is not for me to further state what SUPERVISION this Honorable Supreme Court of the United States may wish to decree: — but surely JUSTICE HAS NOT BEEN DONE: — A REMEDY IS RESPECTFULLY REQUESTED.

A decision which is unconstitutional is "mallum prohibitum", from the beginning and cannot improve with time.

While your appellant is not familiar with the intricate rules and proceedures of this Honorable Court, I plead for a liberal understanding and tolerance.

And that the Court will order such other and further relief in this case as this Honorable Court may deem proper.

The Appellant will be represented at all hearings by legal counsel, who will be prepared to present to the Court all subject matter and Court requirements. Failing to do so, I would rely upon my briefs.

Therefore, if it pleases this Honorable Court, I move that my Appeal (not necessarily for certiorari) be given opportunity for hearing.

Edythe L. Dyer (pro se)
c/o 61 State Street
Bangor, Maine (04401)
May 4 , 1974

STATUTES

Title 14 M.R.S.A. Sec. 5960-5963
M.R.S. (1954) Chap. 170, Sec. I, Sub. sec. II
28 U.S.C. Sec. 2430
Title 18 M.R.S.A. 1551 (Chap. 205)
Title 4 M.R.S.A. Sec. 401
Title 4 M.R.S.A. Sec. 203-251
Title 4 M.R.S.A. Sec. 403-406
Title 4 M.R.S.A. Sec. 7
Title 4 M.R.S.A. Sec. 57
Title 4 M.R.S.A. Sec 49 (Chap. #1)
M.R.S. Chap. 67, Sec. 31, (1919)
14 M.R.S.A. Sec. 6051 (10)

RULES

Rule 15 and 19	U.S.C.
Rule 15(e)	U.S.C.
Rule 33, — (b)	U.S.C.
Rule 52	M.R.C.P. AT P. 216

CASES

Appeal of Martin	133 Me. 422 179 A. 655
Bray vs. Spencer	146 Me. 416 (Me.) 1951
Estate of John Cassidy	313 A. 2nd 435 (Me.) 1974
Cassidy vs. Murray	144 Me. 326
Colonial Bank vs. Stevens	316 A. 2nd 768
Curins vs. Advent Church	93 Me. 292 45 A. 43
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Dodge vs. Dodge	113 Me. p. 158
Eacott Aplt.	95 Me. at p. 526
Edwards Appellant	141 Me. 219 (1945) — (41 A. 2nd 825)
Exparte Smith	145 Me. 174 (74 A. 2nd 225)
Hammond vs. Street	106 Me. at p. 213
Hunt vs. Hunt	37 Me. at p. 343
Hutchins vs. Hutchins	141 Me. 183 (41 A. 2nd 612)
* Am. Jur.	(page 336) 287 U.S. I
Johnson vs. Stetson	159 Me. at p. 44
Legualt vs. Levesque	150 Me. 192 107 A. 2nd 493

Maine vs. King	135 Me. p. 17-18
McKay vs. McInness	279 U.S. 820 49 S. Ct. 34
Messer vs. Jones	88 Me. 383
Morse vs. Hayden	82 Me. at p. 230
Murray vs. Sullivan	158 Me. 98 179 A. 2nd 307 (1962)
National Neward vs. Hart	309 A. 2nd 512 (Me.) 1973
Neely's Estate	136 M. 79 1 A. 2nd 779
Norris vs. Moody	120 Me. 151 (1921) (113 A. 24)
Opinion of Justice	70 Me. 598
Petition of Kimbal	142 Me. 182 (1946) (49 A. 2nd 70)
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Date Opinion Filed
December 26, 1973

Reporter of Decisions
Docket No. 992
Law Docket No. PEN. -73-5

EDYTHE L. RICE DYER, Appellant

APPEAL FROM DECREE

OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY

DELAHANTY, J.

John Cassidy executed his will on February 21, 1906. He created a trust therein for the benefit of his five children and their lineal descendants which should endure until the death of his last surviving child. The testator died on March 25, 1918, leaving no widow and survived by four of his children and a grandchild, Edythe L. Rice Dyer, the appellant in this proceeding. The will was duly admitted to probate. The testamentary trust terminated upon the death of John Cassidy's last surviving daughter, Lucy, on January 9, 1961. The lineal descendants of the testator John Cassidy, in the nearest degree then comprised of six grandchildren.

A substantial estate had accumulated under the trust and its proper disposition was in dispute. On June 21, 1961, the trustee under the will petitioned by way of a declaratory judgment action in the Superior Court for Penobscot County for instructions relating to the making of a final distribution of the assets of the trust. By consent of all of the parties and upon an agreed statement of fact and issue, the case was reported by the Superior Court directly to this Court. By its opinion dated March 25, 1962, this Court decided the issue. Murray vs. Sullivan, 158 Me. 98, 179 A. 2nd 307 (1962).

Pursuant to the mandate in Murray (supra), the Superior Court for the County of Penobscot ordered, inter alia, final distribution. The trust estate was closed and the trustee discharged.

Thereafter, the appellant commenced a series of post judgment proceedings cataloged, in part, as follows:

June 19, 1962	Petition for review; Supreme Judicial Court of Maine; denied.
January 7, 1963	Petition for certiorari; 371 U.S. 949, 83 S. Ct. 501, 9 L.Ed. 2nd 497 (1963); denied.

April 29, 1963	Motion for leave to file petition for rehearing; 373 U.S. 905, 83 S. Ct. 1288, 10 L.Ed. 2nd 201 (1963); denied.
October 21, 1963	Motion for leave to file petition for rehearing; 375 U.S. 892, 84 S. Ct. 143, 11 L.Ed. 2nd 122 (1963); denied.
February 17, 1964	Motion for leave to file petition for rehearing; 376 U.S. 928, 84 S. Ct. 655, 11 L.Ed. 2nd 627 (1964); denied.
March 8, 1965	Petition for certiorari; 380 U.S. 932, 85 S. Ct. 938, 13 L.Ed. 2nd 821 (1965); denied.
April 26, 1965	Petition for rehearing; 380 U.S. 989, 85 S. Ct. 1329, 14 L.Ed. 2nd 282 (1965); denied.

The matter presently in controversy was commenced by way of petition filed by the plaintiff in the Probate Court, Penobscot County and therein treated as an action for a declaratory judgment. After appropriate notice to all parties in interest, formal hearing took place. The principal pleading signed by the plaintiff here was filed pro se. By special leave of the Probate Court, the appellee's husband, a layman, was permitted without objection to present her case in the Probate Court. On October 16, 1969, the Judge of Probate granted defendant's motion to dismiss the complaint and the plaintiff appealed to the Superior Court sitting as the Supreme Court of Probate. The appeal was challenged by the appellee's motion to dismiss. The Supreme Court of Probate allowed by its order that it would "treat the motion as a motion for judgment on the pleadings rather than rely on more narrow grounds of sufficiency of the 'appeal and reasons for appeal.' " The Justice below acting as the Supreme Court of Probate affirmed the decree of the Probate Court and dismissed the appellant's "petition." From this dismissal, the plaintiff appeals. We deny the appeal.

The doctrine of res judicata is determinative of the question before the Court as it relates both to the question of jurisdiction of the Superior Court and to the construction of a will.

I. *Jurisdiction of Superior Court:*

The plaintiff now seeks an adjudication of the same cause of action previously litigated in Murray (supra). The prior proceeding was by the trustee seeking instructions as to the final distribution of the estate trust. The trustee commenced his action in Superior Court pursuant to 14 M.R.S.A. §5956 (3) and § 6051 (10),

> *"The Superior Court shall have jurisdiction to grant appropriate equitable relief in the following cases:*
>
> *"10. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust and the expediency of making changes and investments of property held in trust."*

The issue there presented (method of the trust distribution) was appropriately reported to this Court. That the Supreme Judicial Court has jurisdiction of actions reported to it wherein trustees under will seek instructions as to the distribution of the trust fund is without doubt. M.R.C.P. 72 (b); Maine National Bank vs. Petrlik, Me., 283 A. 2nd 660 (1971). The issues were resolved and "remanded to the Superior Court for an order for judgment. . . ." The trust corpus was then distributed among the trust beneficiaries and the trustee was dismissed of his duties.

The form of the present action is one for declaratory judgment for the construction of a will by employing the equity jurisdiction of the Probate Court under 4 M.R.S.A. §252:

"The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought."

While her position is inarticulately postured, it is evident that the plaintiff seeks a redetermination of the trust previously construed by this Court in Murray (supra). Her position bottoms itself upon the claimed proposition that the Probate Court is the only court of original jurisdiction authorized to enter a decree directing distribution of a trust. Her position incorrectly states the law of this State.

14 M.R.S.A §6051 (10) confers on the Superior Court jurisdiction to grant appropriate equitable relief in matters relating to the construction of wills. 14 M.R.S.A. §6051 (10) supra; Hichborn vs. Bradbury, 111 Me. 519, 90 A. 325 (1914); Cady vs. Tuttle, 127 Me. 104, 141 A. 188 (1928). Such equitable jurisdiction is shared by the Probate Courts when by virtue of 4 M.R.S.A. §252, supra, courts of probate shall have jurisdiction in equity concurrent with the Superior Court in construction of wills.

Concurrent jurisdiction means joint and equal jurisdiction. State vs. Sinnott et al, 89 Me. 41, 35 A. 1007 (1896); Huston vs. Dodge, 111 Me. 246, 88 A. 888 (1913); Norris vs. Moody, 120 Me. 151, 113 A. 24 (1921); Strout vs. Chesley, 125 Me. 171, 132 A. 211 (1926); Eastern Maine General Hospital et al vs. W. Harrison et al, 135 Me. 190, 193 A. 246 (1937).

We hold that the Superior Court had jurisdiction to enter its prior decree of distribution.

II. *Finality of Will Construction:*

In a trustee's action for construction of testamentary trust and for instruction, all persons interested in the sub-

ject matter are required to be parties. Hawes vs. Bragdon, 66 Me. 534 (1877); McGilvery vs. McGilvery, 152 Me. 93, 123 A. 2nd 777 (1956); Hitch vs. Hitch, Me., 261 A. 2nd 858 (1970).

Plaintiff here was a party to Murray (supra) and obligated to litigate all issues.

When a court acts within its assigned capacity in the construction of a trust (under a will), that matter cannot be legitimately relitigated between the parties.

> *"A decree contruing the will and determining the rights of the parties, if rendered by a court of competent jurisdiction, is binding upon all parties to the suit unless attacked directly by appeal or error. . . . " 4 Bowe-Parker: Page on Wills §31.12. See also 96 C.J.S. §1094 (c).*
>
> *" . . . Public policy and the interest of litigants alike require that there be an end to litigation which, without the doctrine of res judicata, would be endless. The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. The doctrine of res judicata not only puts an end to strife, but produces certainty as to individual rights and gives dignity and respect to judicial proceedings." Willette vs. Umhoeffer (supra).*

On remand the decree of the Superior Court acting within its competent jurisdiction in construing the Cassidy estate trust and determining the interest of the parties therein, being all the trust beneficiaries, is binding upon all parties unless successfully attacked directly on appeal. The issue cannot be relitigated to the harassment and vexation of an opponent. Conclusiveness in the construction of wills is a necessary element in the courts' supervision of estate administration.

In North vs. Harris, 126 Me. 371, 138 A. 564 (1927), plaintiffs asked for construction of a will claiming that the testamentary trust did not terminate upon the death of the testator's last son, but rather still continued for their benefit. The Law Court determined that the trust had, in fact, ended and the corpus was "divested of the trust" and therefor the plaintiffs had no interest to ask the equity court to construe the will.

Equity will not assume jurisdiction of a bill for the construcion of a will where any doubt as to the meaning of the language of the will should have been removed by previous decisions.

> *"It should be said, however, that the court will not feel itself bound to answer all questions which can possibly be asked by a devisee. It must appear that the language of the will is such that the parties may reasonably have doubts concerning its true construction. Other parties should not be subjected to the trouble and expense of appearing in court, or the possible hazard of not appearing, in cases where there is no doubt." Haseltine vs. Shepherd, 99 Me. 495, 504, 59 A. 1025, 1029 (1905).*

By this proceeding and successive post judgment attacks on Murray (supra), the plaintiff makes quite clear her intention to ignore the substance and validity of that decision. Dissatisfaction with her share of the trust estate is evident where she agrues that "The Supreme Judicial Court of Maine should overrule its interpretation made in Murray vs. Sullivan, supra (1962) — of what John Cassidy 'should' have intended when he executed his will in 1906." (Sic.) This Court in *Murray* examined, discussed, and determined the legal effect of what John Cassidy said. It could give no heed to what he might or "should" have said. It is a rare testator who will dispose of his worldly goods to the full satisfaction of anticipating relatives. The competing and conflicting interests make full satisfaction well nigh impossible leading one to realize that "The man who wants to make an entirely reasonable will dies intestate."2

While the defendants beseech this Court to deny plaintiff's appeal, they seek further a remand of this action to the Superior Court for a determination of reasonable counsel fees as " . . . there is only one way that the appellant will desist from her persistent course of conduct," which seemingly ignores judicial fiat of both the highest court of the State and the United States.

In denying the appellee's request for counsel fees, we recognize a statutory limitation allowing counsel fees in litigation involving trust matters. We admonish the plaintiff, however, of the inherent authority of this Court to impose pecuniary sanctions upon a litigant who contumaciously ignores orders having judicial finality, and who, as here, persistently and vexatiously pursues a litigious course of conduct to the harassment of the defendants and needless usurpation of judicial process.

The entry shall be,

Appeal denied.

2George Bernard Shaw, preface to, "Androcles and the Lion."

All Justices Concurring.

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Notice: This opinion is subject to formal revision before publication in the Maine Report. Readers are requested to notify the Administrative Assistant to the Chief Justice of any typographical or other errors of form in order that corrections may be made before the print goes to press.

1 14 M.R.S.A. §5956 "Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent may have a declaration of rights or legal relations in respect thereto:

"(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

STATE OF MAINE

Law Court Portland, December 26, 1973

EDYTH L. RICE DYER, Appellant

vs.

APPEAL FROM DECREE OF JUDGE OF PROBATE RE: ESTATE OF JOHN CASSIDY

In the above entitled case brought before the Court as a Court of Law from the .... Superior Court for the County of Penobscot and now pending on the Law Docket, the said case having

been heard and maturely considered,

It is Now Ordered, That the Clerk of the Law Court now having the custody of the Law Docket enter upon said docket under said case, and certify to the Clerk of the ..... Superior Court for the County of Penobscot the following order, direction, judgment and decree of the Court in said case, to wit:

Appeal denied.

Attest: Charles B. Rodway, Jr.
Clerk of Law Court.

To Beatrice L. Park, Esq.

Clerk of Courts for the County of Penobscot

Motion for review Jan. 15, 1974

STATE OF MAINE

SUPREME JUDICIAL COURT

PENOBSCOT, ss. LAW COURT
LAW DOCKET # PEN-73-5

EDYTHE L. RICE DYER)
)
Appellant)
)
FROM THE SUPREME COURT) MOTION TO DENY MOTION
OF PROBATE) FOR REVIEW OF ALLEGED
RE: ESTATE OF) ERRORS OF LAW AND FOR
JOHN CASSIDY) SUPPLEMENTARY RELIEF

Motion of Edythe L. Rice Dyer for reconsideration in the above captioned matter is hereby denied.

Dated this 20th day of February, 1974.

For the Court

Armand A. Dufresu, Jr.
Chief Justice